STATE OF MICHIGAN

COURT OF APPEALS

JUDITH K. HURST,

Plaintiff-Appellant,

v

MARK RYSBERG, RYSBERG HOLDINGS, L.L.C., BRIAN RYSBERG, and LINDA RYSBERG,

Defendants-Appellees.

UNPUBLISHED
April 20, 2006

No. 259564
Ingham Circuit Court
LC No. 03-001092-CH

Before: Murphy, P.J., and O'Connell and Murray, JJ.

PER CURIAM.

Plaintiff appeals as of right from a circuit court order granting defendants' motion for summary disposition pursuant to MCR 2.116(C)(10) in this action involving adverse possession. We affirm. This case is being decided without oral argument pursuant to MCR 7.214(E).

Plaintiff and her husband own property to the east of an undeveloped parcel owned by defendants Brian and Linda Rysberg. This dispute concerns a 50-foot wide strip to the west of the actual border. According to plaintiff, she and her husband began using the disputed property within a short time after they moved to their home next door in May 1982.

The trial court granted defendants' motion for summary disposition, citing two reasons: (1) that plaintiff's activity "does not rise to the level that this court requires to take property away from its owner by adverse possession"; and (2) that Brian Rysberg's entry and exercise of ownership on the disputed portion precluded plaintiff's claim.

Summary disposition may be granted under MCR 2.116(C)(10) when "there is no genuine issue as to any material fact, and the moving party is entitled to judgment . . . as a matter of law." This Court reviews a trial court's decision on a motion for summary disposition de novo. *Maiden v Rozwood*, 461 Mich 109, 118; 597 NW2d 817 (1999).

"To establish adverse possession, the claimant must show that its possession is actual, visible, open, notorious, exclusive, hostile, under cover of claim or right, and continuous and uninterrupted for the statutory period of fifteen years." *West Michigan Dock & Market Corp v Lakeland Investments*, 210 Mich App 505, 511; 534 NW2d 212 (1995) (citation omitted); *Burns*

v Foster, 348 Mich 8, 14; 81 NW2d 386 (1957). The elements must be established by "clear and cogent proof." *Id.*

We hold that the trial court did err not in determining that the evidence concerning Brian Rysberg's 1996 entry entitled defendants to summary disposition.

"The running of the statute of limitations will be tolled by the owner's entry, together with such open and notorious acts of dominion as make manifest the purpose to resume possession of the land. The conduct . . . must be such as would put a reasonably prudent person on notice that he or she actually has been ousted." 3 Am Jur 2d, Adverse Possession, § 107, pp 173-174. If the title owner regains possession and the adverse claimant again ousts him, the adverse claimant cannot add the period prior to the re-entry to a period afterward to establish the requisite 15-year period. MCL 600.5843 states:

> If the person who has a right to make an entry on land or a claim for the possession of land regains possession of it before the period of limitations has run and then loses possession of the premises again, the subsequent loss shall be deemed to give rise to a new claim which has its own period of limitations.

See also *Kipka v Fountain*, 198 Mich App 435, 439-440; 499 NW2d 363 (1993). Inasmuch as adverse possession is premised on the expiration of the limitations period for a property owner to bring a cause of action to recover possession, the accrual of a new cause of action with a new 15-year limitation period effectively restarts the 15-year period necessary to establish ownership by adverse possession.

Plaintiff testified that in 1996, Brian Rysberg started cutting trees on the west side of his property and proceeded toward her home and in the disputed strip. She asked him for 24 hours to get the property surveyed to make sure he did not cut down any of her trees. He refused. She then asked him to leave "the little forested area," part of which is in the disputed strip, because it provided shade and a noise buffer. He responded no, but he would leave the red maple, which was in the strip. He also told plaintiff that he was going to develop "every . . . square inch" of the property.

On appeal, plaintiff argues that the 1996 entry did not interrupt her adverse possession because defendants did not remain in possession for a continuous year or file a lawsuit against her within a year. She relies on *Place v Place*, 139 Mich 509; 102 NW 996 (1905), and *Taggart v Tiska*, 465 Mich 665; 641 NW2d 240 (2002). Those cases involved MCL 600.5868 (and its virtually identical predecessor). The current statute states:

> No person shall be deemed to have been in possession of any lands, within the meaning of this chapter merely by reason of having made an entry thereon, unless he continues in open and peaceable possession of the premises for at least 1 year next after such entry, or unless an action is commenced upon such entry and seisin, within 1 year after he is ousted or dispossessed of the premises.

In *Taggart*, the Court explained that the statute "is relevant in determining whether an adverse possessor's hostile possession of land was interrupted before the expiration of the fifteen-year period necessary to establish ownership by adverse possession." *Id.* at 673-674. In ascertaining

the meaning of the statute, the Court discussed *Place, supra*, which involved the adverse possession of a former marital home, the title of which was in the plaintiff ex-husband but which was occupied by the defendant ex-wife. The *Place* Court stated, "While it appears that during these 15 years plaintiff exercised rights of ownership over portions of the property, it is none the less true that, if defendant's testimony is credited, she never acquiesced in any of these acts. If she did not, these disturbances of her possession would not interrupt the running of the statute of limitations." *Id*. at 510.

Plaintiff did not raise an argument based on MCL 600.5868 below. In fact, her response to defendants' motion for summary disposition did not address their argument specifically directed at the legal effect of the 1996 entry. An issue not raised before and considered by the trial court is generally not preserved for appellate review. *Adam v Sylvan Glynn Golf Course*, 197 Mich App 95, 98; 494 NW2d 791 (1992). Although this Court may review an unpreserved issue if the question is one of law and the facts necessary for its resolution have been presented, *id*. at 98-99, the necessary facts have not been presented in this case. Plaintiff did not submit evidence showing what actions the parties took during that specific period. Moreover, unlike the adverse possessor in *Place*, who did not acquiesce to the owner's exercise of ownership, plaintiff here acquiesced to Brian Rysberg's cutting of trees in the disputed area.

Plaintiff asserts that "[a] new boundary line may be established where the owner acquiesces for the statutory period," and cites *Walters v Snyder*, 239 Mich App 453; 608 NW2d 97 (2000). Acquiescence to a boundary line for the statutory period of 15 years is a theory that is distinct from adverse possession, although both are premised on the 15-year limitations period. See *id*. at 456-457. An allegation of error based on this theory is outside the scope of the single issue stated in plaintiff's Statement of Questions Presented. See MCR 7.212(C)(5). *Preston v Dep't of Treasury*, 190 Mich App 491, 498; 476 NW2d 455 (1991). Moreover, to the extent that plaintiff intended to assert this theory as a separate basis for reversing the trial court's order, the argument is inadequately briefed. Accordingly, "this issue has not been properly presented for review because [plaintiff] has given cursory treatment to the issue with little or no citation to relevant supporting authority for [her] argument." *Silver Creek Twp v Corso*, 246 Mich App 94, 99; 631 NW2d 346 (2001).

Affirmed.

/s/ William B. Murphy
/s/ Peter D. O'Connell
/s/ Christopher M. Murray